

## **Exhibit 4**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- )  
In re: ) SIPA LIQUIDATION  
 )  
BERNARD MADOFF INVESTMENT ) No. 08-01789 (SMB)  
SECURITIES LLC, )  
 )  
Debtor. ) (Substantively  
 ) Consolidated)  
----- )  
In re: )  
 )  
BERNARD L. MADOFF, )  
 )  
Debtor. )  
----- )  
IRVING H. PICARD, Trustee for )  
the Liquidation of Bernard L. )  
Madoff Investment Securities )  
LLC, )  
 ) Adv. Pro. No.  
Plaintiff, ) 10-04995 (SMB)  
 )  
v. )  
 )  
TRUST U/ART FOURTH O/W/O )  
ISRAEL WILENITZ, )  
 )  
EVELYN BEREZIN WILENITZ, )  
individually, and as Trustee )  
and Beneficiary of the Trust )  
U/ART Fourth O/W/O Israel )  
Wilenitz, )  
 )  
SARA SEIMS, as Trustee of the )  
Trust U/ART Fourth O/W/O )  
Israel Wilenitz, )  
 )  
Defendants. )  
----- )

(CAPTION CONTINUED ON THE NEXT PAGE)

1 -----)  
 2 IRVING H. PICARD, Trustee for )  
 3 the Liquidation of Bernard L. )  
 4 Madoff Investment Securities )  
 5 LLC, )  
 6 ) Adv. Pro. No.  
 7 Plaintiff, ) 10-04818 (SMB)  
 8 )  
 9 v. )  
 10 )  
 11 TOBY HARWOOD, )  
 12 )  
 13 Defendant. )  
 14 -----)  
 15 IRVING H. PICARD, Trustee for )  
 16 the Liquidation of Bernard L. )  
 17 Madoff Investment Securities )  
 18 LLC, )  
 19 ) Adv. Pro. No.  
 20 Plaintiff, ) 10-04914 (SMB)  
 21 )  
 22 v. )  
 23 )  
 24 EDYNE GORDON, in her capacity )  
 25 as the executrix and primary )  
 beneficiary of the estate of )  
 Allen Gordon, )  
 )  
 Defendant. )  
 -----)  
 IRVING H. PICARD, Trustee for )  
 the Liquidation of Bernard L. )  
 Madoff Investment Securities )  
 LLC, )  
 ) Adv. Pro. No.  
 Plaintiff, ) 10-04826 (SMB)  
 )  
 v. )  
 )  
 ESTATE OF BOYER PALMER, DIANE )  
 HOLMERS, in her capacity as )  
 Personal Representative of the )  
 Estate of Palmer, and BRUCE )  
 PALMER, in his capacity as )  
 Personal Representative of the )  
 Estate of Boyer Palmer, )  
 )  
 Defendant. )  
 -----)

1 -----)  
 2 IRVING H. PICARD, Trustee for )  
 3 the Substantively Consolidated )  
 4 SIPA Liquidation of Bernard L. )  
 5 Madoff Investment Securities )  
 6 LLC and Bernard L. Madoff, )  
 7 ) Adv. Pro. No.  
 8 Plaintiff, ) 10-04905 (SMB)  
 9 )  
 10 v. )  
 11 )  
 12 TRAIN KLAN, a Partnership; )  
 13 FELICE T. LONDA, in her )  
 14 capacity as a Partner in Train )  
 15 Klan; CLAUDIA HELMIG, in her )  
 16 capacity as a Partner in Train )  
 17 Klan; TIMOTHY LANDRES, in his )  
 18 capacity as a Partner in Train )  
 19 Klan; PETER LONDA, in his )  
 20 capacity as a Partner in Train )  
 21 Klan; TIMOTHY HELMIG, in his )  
 22 capacity as a Partner in Train )  
 23 Klan; and WENDY LANDRES, in her )  
 24 capacity as a Partner in Train )  
 25 Klan, )  
 )  
 Defendants. )  
 -----)  
 IRVING H. PICARD, Trustee for )  
 the Substantively Consolidated )  
 SIPA Liquidation of Bernard L. )  
 Madoff Investment Securities )  
 LLC and Bernard L. Madoff, )  
 ) Adv. Pro. No.  
 Plaintiff, ) 10-004621 (SMB)  
 )  
 v. )  
 )  
 DONALD A. BENJAMIN, )  
 )  
 Defendant. )  
 -----)

1 -----)  
 2 IRVING H. PICARD, Trustee for )  
 3 the Liquidation of Bernard L. )  
 4 Madoff Investment Securities )  
 5 LLC, )  
 6 ) Adv. Pro. No.  
 7 Plaintiff, ) 10-04644 (SMB)  
 8 )  
 9 v. )  
 10 )  
 11 RUSSELL L. DUSEK, )  
 12 )  
 13 Defendant. )  
 14 -----)  
 15 IRVING H. PICARD, Trustee for )  
 16 the Liquidation of Bernard L. )  
 17 Madoff Investment Securities )  
 18 LLC, )  
 19 ) Adv. Pro. No.  
 20 Plaintiff, ) 10-04541 (SMB)  
 21 )  
 22 v. )  
 23 )  
 24 KENNETH W. PERLMAN; FELICE J. )  
 25 PERLMAN; and SANFORD S. )  
 PERLMAN, )  
 )  
 Defendant. )  
 -----)  
 IRVING H. PICARD, Trustee for )  
 the Liquidation of Bernard L. )  
 Madoff Investment Securities )  
 LLC, )  
 ) Adv. Pro. No.  
 Plaintiff, ) 10-04728 (SMB)  
 )  
 v. )  
 )  
 BRUNO DIGIULIAN, )  
 )  
 Defendant. )  
 -----)

1 TRUSTEE'S MOTION TO COMPEL DISCOVERY IN THE  
 2 THREE ADVERSARY PROCEEDINGS:  
 3  
 4 i) Picard v. Benjamin, Adv. Pro. No. 10-04621  
 5 ii) Picard v. DiGiulian, Adv. Pro. No. 10-04728  
 6 iii) Picard v. Train Klan, Adv. Pro. No. 10-04905  
 7  
 8 -and-  
 9 CHAITMAN LLP'S MOTION TO COMPEL DISCOVERY AND THE  
 10 TRUSTEE'S CROSS-MOTION FOR A PROTECTIVE ORDER IN ONE  
 11 ADVERSARY PROCEEDING, PICARD V. WILENTZ, ADV. PRO.  
 12 NO. 10-04995  
 13  
 14 -and-  
 15 CHAITMAN LLP'S MOTION FOR PROTECTIVE ORDER AND QUASH  
 16 TRUSTEE'S DEPOSITIONS IN THE FOLLOWING ADVERSARY SIX  
 17 PROCEEDINGS:  
 18  
 19 i) Picard v. Perlman, Adv. Pro. No. 10-0454  
 20 ii) Picard v. Gordon, Adv. Pro. No. 10-04914  
 21 iii) Picard v. Harwood, Adv. Pro. No. 10-04818  
 22 iv) Picard v. Estate of Palmer, Adv. Pro. No.  
 23 10-04826  
 24 v) Picard v. DiGiulian, Adv. Pro. No. 10-04728  
 25 vi) Picard v. Dusek, Adv. Pro. No. 10-04644  
 TRANSCRIPT OF PROCEEDINGS  
 in the above-titled action, held on Tuesday,  
 December 13, 2016, at JAMS, 680 Eighth Avenue, New  
 York, New York, commencing at approximately 10:00  
 a.m., before Eileen Mulvenna, CSR/RMR/CRR, Certified  
 Shorthand Reporter, Registered Merit Reporter,  
 Certified Realtime Reporter, and Notary Public of  
 the State of New York.

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BEFORE:

HON. FRANK MAAS (RET.), Arbitrator  
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New York, New York 10018  
fmaas@jamsadr.com

APPEARANCES:

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seems to me it's logical that if you rule that the trustee has to produce X document, I shouldn't have to make 92 applications for that.

My sense is that if the judge makes a ruling -- all of these cases are virtually identical in the -- the complaints are virtually identical. So why would one client be entitled to a certain kind of discovery and another wouldn't? I just think we could simplify this so much if we could apply your rulings to all of the outstanding cases that I have.

THE ARBITRATOR: Why don't we leave it as that would be a good thing to do. As we get deeper into this, assuming there is a deeper into this, we can try and work that out.

It struck me that there were areas like that. And I'm sure the trustee has a reason, but by way of example, there was a discussion before Judge Bernstein about the Dubinsky report having been served in Action A, but not Action B, although Ms. Chaitman is counsel in both A and B. And

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THE ARBITRATOR: I thought we'd start with a couple of housekeeping matters.

When we spoke in the telephone conference call and implicit in Judge Bernstein's rulings, or I guess really explicit, is that the rulings I make will apply to the other adversary proceedings to which it's applicable.

But I assume that's something the two sides will try to work out amongst themselves?

MR. HUNT: Yes. I mean, I don't think we're willing to beat our head against a wall on things, but I think each of these cases have some nuances that are different. So there may be something that's easily translatable, but sort of depends on the issue, I think.

MS. CHAITMAN: But I actually -- this is something that I've tried to work out previously. I'm defending 92 of these actions.

THE ARBITRATOR: You just answered another question I had on the list. Go on.

MS. CHAITMAN: The thing is, it just

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I assume that is a function of scheduling issues. Is that --

MR. JACOBS: That's correct.

THE ARBITRATOR: Spell that out for me, if you could.

MR. JACOBS: Sure. Most of Ms. Chaitman's cases are either -- all of them have their own independent case management order. While there might be groups of them that are roughly proceeding together, they're all different.

So the expert disclosure dates differ for each of those matters. In the Wilenitz case, which is before you today, your Honor, we served the Dubinsky report early to try to avert some of the discovery disputes that we're having here.

And also Ms. Chaitman has received that report in the normal course of the offer and case management order in a number of other cases that aren't before you today.

The Dubinsky report at the moment hasn't changed and that -- there has been a revision, but not in any of Ms. Chaitman's cases. And for a number of years now, it's

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1 might warrant some shortcuts, but you have  
2 been given a list of all of the employees.  
3 And, again, Request No. 12, like at least one  
4 of the other requests, asks for attorney work  
5 product to the extent that it's going beyond  
6 what Mr. Dubinsky did. So I'm going to deny  
7 Request No. 12.

8 MS. CHAITMAN: Okay. Request No. 13,  
9 they actually ultimately produced the  
10 document.

11 THE ARBITRATOR: Right.

12 MS. CHAITMAN: "Explain the basis on  
13 which you determined that the defendants have  
14 no net equity and produce the front and back  
15 of each check."

16 Well, they've actually -- they  
17 produced those now.

18 Number 15, "Explain how you intend to  
19 establish that Madoff was insolvent in each  
20 year from 1960 to 2000 and produce all  
21 documents on which you will rely to establish  
22 insolvency."

23 What they've done is simply relied  
24 upon their expert.

25 THE ARBITRATOR: Right.

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1 e-Data Room 1.

2 MS. CHAITMAN: If they're relying on  
3 the Dubinsky report, then they're limited to  
4 the Dubinsky report, I assume, and they're  
5 not going to be able to introduce evidence  
6 beyond that. And if I get such an order,  
7 then I'm satisfied with it.

8 But I don't want a situation where  
9 they all of a sudden decide that, for  
10 whatever reason, Dubinsky's report is not  
11 reliable and now they're going to put in a  
12 whole bunch of evidence that I haven't had  
13 the opportunity to obtain in discovery.

14 MR. JACOBS: On insolvency?

15 MS. CHAITMAN: Yes.

16 MR. JACOBS: We have endeavored to  
17 make available everything we could possibly  
18 find that might be relevant to that subject  
19 matter. You have all --

20 THE ARBITRATOR: Is there anything  
21 beyond Dubinsky and the documents he relies  
22 on that you would proffer at trial?

23 MR. JACOBS: Absolutely not. And  
24 certainly if -- just as Ms. Chaitman stated  
25 earlier, if we obtain something from a third

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1 Who's the expert on this?

2 MR. JACOBS: It's Mr. Dubinsky. So  
3 his report is broad in insolvency  
4 collectively. And so all that discovery and  
5 that analysis has been made available in this  
6 case.

7 However, Judge Bernstein has raised a  
8 good question as to whether insolvency is any  
9 longer actually an element in our case -- in  
10 this case. I believe the answer is, no, it's  
11 not a burden of proof that we have with  
12 respect to the avoidance actions.

13 However, I expect at some point that  
14 will be addressed on motion or briefing after  
15 further briefing with Judge Bernstein.

16 But even if it is relevant, it's our  
17 same response as to the prior request,  
18 number 11, asking for the basis of the facts  
19 on which we state our conclusion that BLMIS  
20 was a fraud. It's the same answer as -- this  
21 is exactly the subject matter of  
22 Mr. Dubinsky's expert's analysis. We rely on  
23 his report in answering this interrogatory  
24 and all of the specific documentation he  
25 references, which we've made available in

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1 party, we'll provide it and we'll add to the  
2 data room and we'll supplement a report, if  
3 needed. We'll make it available. But  
4 sitting here today, there's nothing to my  
5 knowledge that has not been made available on  
6 that subject.

7 THE ARBITRATOR: I think you can  
8 answer it by saying, "See Dubinsky report."

9 MR. JACOBS: Okay.

10 THE ARBITRATOR: What I know about  
11 bankruptcy could be written on the head of a  
12 pin, but I did look at 11 U.S.C. Section 548  
13 (a)(1)(A) versus (B). And it does appear  
14 that Judge Bernstein was right when he said  
15 that insolvency is not an issue when you have  
16 an intent to defraud.

17 MR. JACOBS: Right. And to explain  
18 why we address it affirmatively is, as I'm  
19 sure you know from the background materials  
20 we provided, the legal landscape of this case  
21 has changed for many defendants over time,  
22 including what we call the feeder fund in the  
23 bank cases, where we have a claim above and  
24 beyond just the avoidance actions we have  
25 here.

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1 But also -- you know, insolvency also  
2 could be construed as being indirectly  
3 relevant to the fraud. Insolvency is an  
4 indicia of fraud. So that interrelates with  
5 these earlier periods of time. Whether it  
6 be -- so I'm making this point because the  
7 issue of whether stocks were traded or not is  
8 in and of itself not conclusive of whether  
9 there was a Ponzi scheme or a fraud.

10 So that is an important fact that I  
11 don't think gets conflated in the discovery  
12 disputes we're having. I just wanted to make  
13 it clear.

14 THE ARBITRATOR: Okay. Anything else  
15 on Wilenitz?

16 MS. CHAITMAN: Yes, number 16.

17 THE ARBITRATOR: Oh, I'm sorry.

18 MS. CHAITMAN: "Provide the gross  
19 trading volume by both number of shares  
20 traded and total dollar value for each of  
21 Madoff's operations broken down by the  
22 investment advisory business, the proprietary  
23 trading business, and the market-making  
24 business and produce the documents on which  
25 you base your responses."

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1 MR. JACOBS: Now, our objection here,  
2 your Honor, is something you alluded to this  
3 morning with respect to the nature of the DTC  
4 records. Our answer -- our objection to this  
5 particular request is -- we have a number of  
6 objections, but first and foremost, this is  
7 an investigation that Ms. Chaitman is asking  
8 us to do to further her speculative theory  
9 that she wishes to advance to challenge the  
10 fraud.

11 We've made the underlying  
12 documentation that is available, all of it,  
13 to her. She can do that investigation  
14 herself. And under Rule 33(d) that is  
15 entirely appropriate and called for here.

16 And to be clear, we're not just saying  
17 go look in the data room. We have told her  
18 specifically where all of the documents she  
19 would need to attempt this manipulation of  
20 the data for her purposes can be found. And  
21 it's all in a single, segregated folder  
22 called DTC under the main subfolder data in  
23 the data room.

24 MS. CHAITMAN: But it doesn't because  
25 that's not -- that's 2002 on. And, again,

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1 we're --

2 MR. JACOBS: Again, I'll reiterate,  
3 your Honor, Ms. Chaitman has everything we  
4 have and we've -- at the moment, that we know  
5 of. So we don't have any other documentation  
6 that we know of that would allow us to do  
7 this.

8 And the DTC records specifically --  
9 they don't track -- they show day-over-day  
10 difference, like in volume. So they'll show  
11 that X amount of a certain type of stock  
12 was -- existed and BLMIS held this day and  
13 then the next day it changed by this amount.

14 It's not exact -- the DTC records  
15 don't break out the data into these easily  
16 discernible buckets that Ms. Chaitman would  
17 like it to. And unfortunately we can't help  
18 that. So we can't do the impossible.

19 I don't know of any records that would  
20 allow us to assign this volume data that  
21 she's looking for by the proprietary trading  
22 versus investment advisory business. All I  
23 can say is that we have the DTC data that  
24 reflects trading done through BLMIS's only,  
25 and they only have one, DTC terminal for the

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1 relevant period that we have.

2 And it's all been made available, and  
3 she can do whatever investigation she wishes,  
4 including, she can hire her own consultants  
5 to analyze that, she can hire her own expert  
6 to opine as to what that means. We shouldn't  
7 have to do that for her.

8 THE ARBITRATOR: I gather this goes to  
9 the notion that if two of the three  
10 activities of BLMIS were legitimate, the  
11 Ponzi scheme presumption should not apply.

12 MS. CHAITMAN: In part.

13 THE ARBITRATOR: Okay.

14 MS. CHAITMAN: And, in part, that the  
15 fraud did not start until 1992. So, you  
16 know, the DTC records, which unfortunately  
17 only exist from 2002 on, are not relevant.  
18 Once Mr. Madoff says the fraud started in  
19 1992, I'm not going to argue that it started  
20 later. Right. So I'm only focusing on the  
21 period prior to 1992.

22 But, again, that's very significant  
23 because a lot of my clients would be entitled  
24 to dismissal of the complaint if the court  
25 found that the fraud did not start until

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1 1992.

2 THE ARBITRATOR: Is it correct,  
3 Mr. Jacobs, that you don't have the records  
4 for the period from 1980 to 1992, to your  
5 knowledge, that --

6 MR. JACOBS: It's the same records we  
7 were discussing earlier in the day that we  
8 will look for. I will update you in a week's  
9 time as to those efforts. I don't know of  
10 any that I confirm that exist beyond what is  
11 in the data room currently. And if we find  
12 them, we will produce them.

13 THE ARBITRATOR: But even if there are  
14 records, it seems to me that this is really  
15 an exercise -- I recognize that we're dealing  
16 with far more limited resources, but one that  
17 you, or an expert that you retain, would have  
18 to engage in; that it's not appropriate to  
19 have the trustee endeavor to do this,  
20 assuming that he could, in terms of breaking  
21 it down by business.

22 And I thought I heard Mr. Jacobs say  
23 that they couldn't do it even if they had the  
24 records. So I'm going to deny that request.

25 17? Is that --

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1 have -- could go on for thousands of  
2 transactions. And then at the bottom, it  
3 would say Madoff owes the clearinghouse  
4 3 cents or the clearinghouse owes Madoff  
5 3 cents. So it could be that.

6 There are all different kinds of  
7 records that would have reflected the  
8 trading. And I just want it to be clear that  
9 I'm asking for that very broad scope, and  
10 we're talking about the period prior to 1992.

11 MR. JACOBS: Again, your Honor, the  
12 issue is the same as the issue I had with  
13 Request 16. All of the documents that  
14 evidence actual trading at BLMIS have been  
15 made available to Ms. Chaitman, in addition  
16 to the DTC records, as I mentioned.

17 We also subpoenaed the Chicago Board  
18 of Options Exchange. We also subpoenaed the  
19 Chicago Mercantile Exchange. We also scoured  
20 all the books and records of the debtor to  
21 see if there were any indicia of these  
22 out-of-the-market or weekend or black pools  
23 of liquidity -- trading that Mr. Madoff says  
24 he was doing. There's no evidence of that.  
25 And what there is we've made available.

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1 MS. CHAITMAN: 17 I think we covered  
2 because that was the employees.

3 THE ARBITRATOR: Right. Well --

4 MS. CHAITMAN: I've got the list that  
5 specifies the area so --

6 THE ARBITRATOR: What else?

7 MS. CHAITMAN: -- I'm okay with that.

8 18. And this is "For each security  
9 listed on the defendants' account statements  
10 for each year from 1982 on, set forth the  
11 number of shares that BLMIS held."

12 And that again goes to the trading  
13 records. And just to be absolutely clear  
14 about this, the evidence of the trading could  
15 have existed in a number of different forms.  
16 It could have been actual computer-generated  
17 records where they kept track of the  
18 securities.

19 And considering the volume that Madoff  
20 was doing and the fact that it was  
21 market-making, it wasn't done on an exchange.  
22 So it was done privately, from firm to firm.  
23 And there were internal records -- there  
24 would be like a -- at the end of a day, there  
25 would be a netting out sheet, which would

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1 So what Ms. Chaitman would like to do  
2 is -- if I understand her theory correctly,  
3 is she would like to now argue that the --  
4 there were stocks traded through the  
5 proprietary trading arm of BLMIS on behalf of  
6 specific IA customers.

7 And I can tell you with all of the  
8 documents that I currently know exist, which,  
9 again, I reiterate she has, there is  
10 absolutely no evidence that that ever  
11 happened.

12 And, furthermore, even if I wanted  
13 to --

14 THE ARBITRATOR: But she also has an  
15 interim step, which is, if IBM was shown on  
16 Customer Jones' statement and --

17 MR. JACOBS: Right.

18 THE ARBITRATOR: -- and BLMIS was long  
19 IBM on that same date --

20 MR. JACOBS: Right.

21 THE ARBITRATOR: Tell me that.

22 MR. JACOBS: Right. Well, it's my  
23 understanding -- and, again, I don't want to  
24 speak for our expert, but this is an issue  
25 that, again, Mr. Dubinsky squarely addresses